

**THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

W.P.NO. 7903 OF 2004

Date: 11.07.2006

Between:

K.M. Hidayatulla.

... Petitioner

and

1. The Secretary to Govt. of Andhra Pradesh, (Services-IV) Irrigation & C.A.D. Department, Secretariat, Hyderabad and six others.

... Respondents.

**THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

W.P.NO. 7903 OF 2004

ORDER: (per Hon'ble sri Justice Ramesh Ranganathan)

Aggrieved by the order of the A.P. Administrative Tribunal (A.P.A.T.), in O.A.9112 of 1998 dated 16.4.2004, the present writ petition is filed.

The petitioner, an Engineering graduate, was initially appointed on 19.11.1981 in the Indian Population Project-II (I.P.P-II), a project started by the Government of A.P. and

sponsored by the Government of India. The State Government issued G.O.Ms.No. 413 dated 29.08.1983 to regularize the services of such temporary employees who were continuing in service and were appointed during the period 10.08.1979 and 05.03.1982. Respondents 3 to 7 herein were appointed consequent upon their selection as Assistant Executive Engineers by the A.P. Public Service Commission in May, 1984. The petitioner, along with Eight others, filed W.P.7841 of 1985 before this Court seeking absorption and regularization of their services in any of the government departments in accordance with G.O.Ms.No.413 dated 29.8.1983. This Court, by order in W.P.M.P.No.10750 of 1985 in W.P.No.7841 of 1985 dated 11.10.1985, directed that the petitioners be absorbed in the Public Works Department or against posts in the Telugu Ganga Project or in any other works and then to have their cases considered for regularization in accordance with G.O.Ms.No.413 dated 29.08.1983, treating their services as in the department and that their absorption shall take place within six months from the date of receipt of the order. The Government issued orders on 23.03.1986 absorbing the petitioner herein as an Assistant Executive Engineer in the Irrigation department pursuant to G.O.Ms.No. 564 dated 05.12.1985. The Chief Engineer, Telugu Ganga Project, vide proceedings dated 28.03.1986, issued orders posting the petitioner to the Telugu Ganga project. The Director of Medical & Health, vide letter dated 28.07.1986, requested the Irrigation department to absorb the petitioner and others, who belonged to the I.P Project-II, by implementing the orders of this Court in W.P.M.P.No.10750 of 1985 dated 11.10.1985. Before the petitioner's services could be regularized in terms thereof, W.P.No.7841 of 1985 itself came to be dismissed on 12.2.1987 leaving it open to the petitioner to invoke the jurisdiction of the A.P.A.T. The petitioner, however, did not chose to invoke the jurisdiction of the A.P.A.T. for the relief sought for in W.P.No. 7841 of 1985.

Curiously, after W.P.No. 7841 of 1985 itself was dismissed, the Engineer in Chief, vide proceedings dated 3.6.1989, regularised the services of the petitioner under G.O.Ms.No.413 dated 29.8.1983 commencing his probation from 31.1.1982 treating the service rendered by him in the Indian Population Project as service rendered in the Irrigation department. By order dated 04.10.1989, the petitioner's probation was declared taking the date of commencement of probation as 31.01.1982. Though the petitioner had joined the Irrigation Department in August 1986, his services were regularised with retrospective effect from the date he was initially appointed in the Indian Population Project-II.

Pursuant to a representation submitted, by members of the Association of Assistant Executive Engineers, in 1994 the Government sought for a report from the Engineer in Chief who, in his letter dated 28.11.1994, informed that the services of 10 Assistant Executive Engineers, including the petitioner, had been regularised retrospectively from their initial date of joining in the Indian Population Project in terms of G.O.Ms.No.413 dated 29.8.1983. The Government, vide memo dated 31.5.1997, proposed to place candidates from the Indian Population Project, including the petitioner, below the 1986 batch of candidates selected by the A.P. Public Service Commission in view of the executive instructions issued in G.O.Ms.No.81 dated 13.2.1986. G.O.Ms.No. 81 dated 13.02.1986 was issued for

regularization of services of temporary employees, appointed during the period 06.03.1982 and 01.01.1986, without subjecting them to any written or oral test. Since regularization of services of candidates from the I.P.P. would be affected in view of its proposed action, it was considered necessary by the Government to issue notice to the affected persons, give them an opportunity of being heard and thereafter issue an appropriate speaking order. Petitioner would contend that the Government memo dated 31.5.1997 is only in relation to those whose services were regularized in accordance with G.O.Ms.No.81 dated 13.2.1986 and not the petitioner who was regularized in service under G.O.Ms.No.413 dated 29.8.1983.

The office of the Engineer in Chief prepared a seniority list of Assistant Executive Engineers, in Zone IV, on 07.07.1997 for promotion to the post of Deputy Executive Engineers. The petitioner was shown at Sl.No.96 in the said seniority list along with other candidates whose services had been regularized under G.O.Ms.No.413 dated 29.08.1983. On the basis of the said seniority list, the petitioner's case was initially considered for promotion as Deputy Executive Engineer, but was subsequently deferred. Pursuant to the Government memo dated 31.5.1997, consequential orders were issued by the Engineer in Chief in his proceedings dated 12.12.1997 informing that the seniority of the Assistant Engineers/Executive Engineers, whose names were mentioned in the annexure to the proceedings, would be reckoned below the last candidate from the A.P.P.S.C. batch selected in 1986. They were also informed that if they had any objection against the proposed seniority list, they should submit their objections within 15 days.

Aggrieved by the government memo dated 31.05.1997 and the proceedings of the Engineering-in-chief dated 12.12.1997, certain Assistant Executive Engineers filed O.A.Nos. 7951 and 8062 of 1997. The petitioner, however, submitted his objections on 18.12.1997 contending that since his services had been regularized under G.O.Ms.No.413 dated 29.8.1983, in view of the order of this Court dated 11.10.1985, the proposal was not applicable to him. The Engineer in Chief issued letter dated 7.1.1998 requesting the government to delete the name of the petitioner from the approved panel for promotion to the post of Deputy Executive Engineer.

The Tribunal, in its order in O.A.Nos. 7951 and 8062 of 1997 dated 04.05.1998, took note of the fact that the applicants therein were initially appointed in the Indian Population Project, they were subsequently absorbed in the Irrigation department under G.O.Ms.No. 564 dated 15.12.1985, and that the applicants were appointed on temporary basis with the condition that their services would be regularized after they were selected by the A.P.P.S.C. The Tribunal held that, as the post of Dy. Executive Engineer was within the purview of the A.P.P.S.C for direct recruitment, selection had to be made by the A.P.P.S.C. and that any appointment orders issued in favour of the applicants without their being selected by the A.P.P.S.C. would be in contravention of the rules unless the posts of Assistant Executive Engineers were withdrawn from the A.P.P.S.C. and the Government issued orders for regularization of such temporary appointments.

In the circular memo dated 26.10.1998, the Engineer in Chief referred to the fact that

one M.Chidambara Murthy, Asst. Executive Engineer and 3 others of the defunct IPP group whose services were regularized under G.O.Ms.No.81 dated 13.2.1986, had filed O.A.No.7951 of 1997, that the Assistant Engineers, who were selected by the Public Service Commission and had joined the department in 1989 had filed O.A.8062 of 1997 challenging the government memo dated 31.5.1997 and the proceedings of the Engineer in Chief dated 12.12.1997, that the Tribunal by order dated 6.5.1998 had dismissed O.A.No.7951 of 1997 filed by M. Chadambara Murthy and others and had directed the respondents to pass appropriate orders on the claim of the Assistant Engineers after examining their representation dated 15.12.1997 and after giving them an opportunity of being heard, that in their representation dated 15.12.1997 the A.P. Asst. Executive Engineers Association had requested that they be treated as seniors to the IPP personnel, as I.P.P. personnel were entitled for regularization only in terms of G.O.Ms.No.193 dated 14.3.1990 with prospective date and seniority and that they should be placed below them, as they were the last regular candidates, in accordance with the conditions stipulated in G.O.Ms.No.193 dated 14.3.1990. The Engineering-in-chief took note of the fact that, in O.A.7951 of 1997 dated 4.5.1998, the Tribunal had held that the interim orders passed by this Court in W.P.M.P.10750 of 1985 had merged with the final orders in W.P.No.7841/85 which was itself dismissed on 12.2.1987, that the surplus Assistant Executive Engineers/Assistant Engineers of IPP II were absorbed in the I & CAD department through proceedings dated 25.3.1986, at that stage their services were treated as temporary under Rule 10(a)(i) of General Rules for State and Subordinate Services, and that regularization of their services was subject to their selection by the Public Service Commission. The Engineering-in-chief held that in view of the observations made by the A.P.A.T. in O.A.7951/97, their eligibility for regularization of their services, without the media of the Public Service Commission, after their absorption on temporary basis in the I & CAD department, arose only on the basis of the orders issued in G.O.Ms.No.193 dated 14.3.1990 and that these orders provided for regularization of those appointed on temporary basis between the period 2.1.1986 to 1.8.1989 with retrospective effect. The Engineer in Chief held that the temporary recruits, including the IPP batch, on their services being regularized under G.O.Ms.No.193 dated 14.3.1990, were to be assigned seniority below the 1989 batch of PSC direct recruit candidates and accordingly issued notice inviting objections from the Asst. Executive Engineers/Asst. Engineers of IPP II.

Under the circular memo dated 26.10.1998, a fresh notice was given to the Asst. Executive Engineers/Asst. Engineers of IPP II duly modifying the earlier orders, placing them below the 1989 APPSC batch direct recruits with regularizations of their services under G.O.Ms.No.193 dated 14.3.1990 instead of below the 1985 batch public service commission recruits, and calling upon them to submit their objections, if any, within 15 days from the date of issue of the said circular memo.

The petitioner approached the A.P.A.T, in O.A.No. 9112 of 1998, seeking a declaration that the action of the respondent, basing on the government memo dated 31.5.1997, consequential proceedings of the Engineer in Chief dated 7.1.1998, proceedings dated

12.12.1997 and Circular dated 26.10.1998, as not being applicable to him, for a direction to place him in the seniority list in accordance with the regularization orders issued pursuant to G.O.Ms.No.413 dated 29.8.1983 and to promote him as Deputy Executive Engineer pursuant to the proceedings of the Engineer in Chief dated 09.12.1997.

The Tribunal, in its order in O.A.No. 9112 of 1998 dated 16.04.2004, relying on its earlier common judgment in O.A.No. 7951 and 8062 of 1997 dated 04.05.1998, held that, since the order placing the petitioner on probation, by applying G.O.Ms.No. 413 dated 29.08.1983 and the order of the High Court in W.P.M.P.No. 10750 of 1985, were not applicable to him, the conditional order issued by the Engineering- in-Chief on 03.06.1989, placing him on probation, did not confer any right in so far as his claim of seniority from the date on which he was placed on probation was concerned. The Tribunal took note of the fact that the petitioner herein was not appointed in accordance with the rules and but for G.O.Ms.No. 81, which was wrongly issued, his case would not have been considered. The Tribunal also took note of the fact that even in G.O.Ms.No. 81 conditions were imposed that the petitioner had to undergo the examination conducted by the A.P. Public Service Commission and to get his services regularized, which the petitioner did not comply with. The Tribunal held that when the claims of similarly situated persons, coming from I.P.P.II in the Medical & Health Department, were negatived the petitioner could not claim a different relief. While holding that the common judgment rendered by the Tribunal in O.A.No. 7951 of 1997 and 8062 of 1997 did not operate as resjudicata against the petitioner, the Tribunal held that the conclusions drawn thereunder applied to similarly situated persons like the petitioner and as such the service rendered by the petitioner in I.P.P.II could not be reckoned and tagged on to the service rendered after his appointment in the Irrigation and Command Area Development Department in 1986. The Tribunal further held that, since the petitioner did not appear for the examination held by the A.P. Public Service Commission in 1989, he was governed by G.O.Ms.No. 193 dated 14.03.1990 and not by G.O.Ms.No. 413 dated 29.08.1983 and as such the petitioner should be put below the 1989 A.P.P.S.C. direct recruits and not above them. The impugned memos issued by the Government were upheld by the Tribunal. While dismissing O.A.No. 9112 of 1998 filed by the petitioner the Tribunal held that the service rendered in the I & CAD department alone had to be considered for the purpose of reckoning seniority while considering the case of the petitioner for further promotion and that the petitioner should be considered for promotion only after the 1989 direct recruits.

While Sri K.Vasudeva Reddy, learned counsel for the petitioner, would seek to make submissions on merits and contend that the petitioners herein were rightly regularized in accordance with G.O.Ms.No.413 dated 29.8.1983 in terms of the interim orders of this Court dated 11.10.1985, Sri M.Ratna Reddy, learned counsel for respondents 3 to 7, would submit that regularization of the services of the petitioner on 3.6.1989 was subsequent to the dismissal of the writ petition itself on 12.2.1987 and inasmuch as the interim order passed in W.P.M.P.10750/85 in W.P.7841/85 dated 11.10.1985 had merged with the final order in the writ petition and did not survive dismissal of the main writ petition, the proceedings of the

Engineer in Chief dated 3.6.1989 regularizing the services of the petitioner herein as Assistant Executive Engineer was illegal as the said order was passed in accordance with the interim order of this Court in W.P.M.P.10705/95 dated 11.10.1985, even though W.P.No. 7841 of 1985 itself had been dismissed on 12.12.1987 prior to 03.06.1989. Learned Counsel would submit that de hors the interim order passed by this Court, the petitioner's case was not covered under G.O.Ms.No. 413 dated 29.8.1983 and he was not entitled for regularization in terms thereof and the proceedings of the Engineer in Chief dated 3.6.1989 was clearly not in accordance with the rules. Learned counsel would seek to sustain the order of the Tribunal wherein it was held that the services of the petitioner was governed by G.O.Ms.No.193 dated 14.03.1990 and not G.O.Ms.No.413 dated 29.8.1983 and therefore the petitioner had to be placed below the 1989 P.S.C. direct recruits and not above them.

While these submissions of Sri M. Ratna Reddy, learned Counsel for the unofficial respondents, cannot be said to be without merit, it is necessary to note that the orders challenged by the petitioner herein before the Tribunal are the government memo dated 31.05.1997, the consequential proceedings issued by the Engineering-in-Chief dated 07.01.1998, the proceedings dated 12.12.1997 and the circular memo dated 26.10.1998. The petitioner sought for a declaration that the aforesaid memos/orders/circulars were not applicable to him and that he was entitled to be placed in the seniority list in accordance with the orders of regularization issued under G.O.Ms.No. 413 dated 29.08.1983. The petitioner sought for a consequential direction, to the respondents, to promote him as a Deputy Executive Engineer pursuant to the Engineer in Chief letter dated 09.12.1997. As noted above, the government memo dated 31.05.1997 was a proposal to place candidates from I.P.P.II, including the petitioner, below candidates of the A.P. Public Service Commission direct recruit batch of 1986, in view of the instructions issued in G.O.Ms.No. 81 dated 13.02.1986. Under the said memo dated 31.05.1987 the Engineering-in-Chief was requested to give notices to the affected persons and to provide them an opportunity of being heard and thereafter to issue an appropriate speaking order. Under the letter dated 07.01.1998 the Engineering-in-Chief requested the government to delete the name of the petitioner from the list furnished to the Government, vide letter dated 09.12.1997, whereunder the petitioner's name was sent to the Government for being reviewed by the screening committee for promotion as Deputy Executive Engineer. Under the proceedings, of the Engineering-in-Chief, dated 12.12.1997 the petitioner was informed that his seniority would be reckoned below the last of the A.P.P.S.C. selected candidates in the selection held in 1986, and his objections, to the proposed revision in seniority, was called for. The Circular memo dated 26.10.1998, in fact, refers to the earlier government memo dated 31.05.1997, the Engineering-in-Chief proceedings dated 12.12.1997 as also to the order of the A.P.A.T. in O.A.No. 7951 of 1997 and 8062 of 1997 dated 04.05.1998 whereby Assistant Executive Engineers/Assistant Engineers of I.P.P. II were sought to be placed below the 1989 A.P.P.S.C. recruits with regularization of their services under G.O.Ms.No. 193 dated 14.03.1990 instead of below the 1986 Public Service Commission Recruits. In the Circular memo dated 26.10.1998 the petitioner, along

with others, was called upon to submit his objections to the proposal to place them below the 1989 batch of P.S.C candidates and to regularize their services under G.O.Ms.No.193 dated 14.3.1990. Instead of filing his objections, to the proposals made in Circular memo dated 26.10.1998, the petitioner chose to approach the Tribunal which resulted in the order impugned in this writ petition being passed. While the situation which the petitioner find himself is no doubt of his own making, he cannot be put in a position worse than the one whereby he was called upon to submit his objections to the Circular Memo dated 26.10.1998, which memo was also the subject matter of challenge in O.A.No. 9112 of 1998.

We deem it appropriate, therefore, to grant liberty to the petitioner herein to submit his objections to the proposals of the Engineer in Chief in Circular Memo dated 26.10.1998. If the petitioner submits his objections, to the proposed revision of the seniority list, within two weeks from the date of receipt of a copy of this order, the respondents shall consider the said objections in accordance with law and pass orders thereon within three months thereafter without, in any manner, being influenced by any observations made either by the Tribunal in O.A.9112/98 dated 16.4.2004 or by this court in this order.

The Writ Petition is accordingly disposed of. However, in the circumstances, without costs.

B.PRAKASH RAO

Date : .07.2006

RAMESH RANGANATHAN

ASP/MRKR

